

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)			ADVERSARY PROCEEDING NUMBER (Court Use Only)	
<b>PLAINTIFF</b> USA Commercial Mortgage Company			<b>DEFENDANT</b> Gateway Stone Associates, LLC	
ATTORNEYS (Firm Name, Address, and Telephone No.) Lenard E. Schwartz, Esq. Jeanette E. McPherson, Esq. Schwartz & McPherson Law Firm 2850 South Jones Blvd., Suite 1 Las Vegas NV 89146 (702) 228-7590			ATTORNEYS (If Known) Daniel D. White, Esq. 23 Corporate Plaza Drive Suite 160 Newport Beach, CA 92660-7942	
<b>PARTY</b> (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY				
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Injunctive Relief				
<b>NATURE OF SUIT</b> (Check the one most appropriate box only.)				
<input type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11 or Chap. 13 Plan <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523 <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input checked="" type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 498 Other (specify) <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. §727 <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan				
<b>ORIGIN OF PROCEEDINGS</b> (Check one box only.)			<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court				
<b>DEMAND</b>	NEAREST THOUSAND \$0	OTHER RELIEF SOUGHT		<input type="checkbox"/> JURY DEMAND
<b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>				
NAME OF DEBTOR USA Commercial Mortgage Company USA Capital Realty Advisors, LLC USA Capital Diversified Trust Deed Fund, LLC USA First Trust Deed Fund, LLC USA Securities, LLC			BANKRUPTCY CASE NO. BK-S-06-10725 LBR BK-S-06-10726 LBR BK-S-06-10727 LBR BK-S-06-10728 LBR BK-S-06-10729 LBR Jointly Administered Under Case No. BK-S-06-10725 LBR	
DISTRICT IN WHICH CASE IS PENDING NEVADA		DIVISIONAL OFFICE LAS VEGAS		NAME OF JUDGE HONORABLE LINDA B. RIEGLE
<b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>				
PLAINTIFF		DEFENDANT		ADVERSARY PROCEEDING NO.
DISTRICT		DIVISIONAL OFFICE		NAME OF JUDGE
<b>FILING FEE</b> (Check one box only.) <input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED				
DATE 10/19/06	PRINT NAME Lenard E. Schwartz, Esq.		SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Lenard E. Schwartz, Esq.	

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**E-file on October 19, 2006**

Attorneys for Plaintiff, USA Commercial Mortgage Company

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

**Jointly Administered Under  
 Case No. BK-S-06-10725 LBR**

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

**Adversary No. 06-**

In re:  
 USA SECURITIES, LLC,  
 Debtor.

Affects:  
☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

**COMPLAINT SEEKING  
 INJUNCTIVE RELIEF AGAINST  
 NON-BANKRUPTCY LITIGATION  
 AND FOR DECLARATORY RELIEF**

USA COMMERCIAL MORTGAGE COMPANY  
 Plaintiff,

vs.

GATEWAY STONE ASSOCIATES, LLC, a  
 Delaware limited liability company,

Defendant.

1 Plaintiff, USA Commercial Mortgage Company ("USACM"), by and through its counsel,  
2 Schwartzer & McPherson Law Firm, hereby complains as follows:

### 3 JURISDICTION

- 4 1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157.
- 5 2. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and  
6 (O).
- 7 3. This is an adversary proceeding pursuant to Fed.R.Bankr.P. 7001.
- 8 4. This court has venue over this proceeding pursuant to 28 U.S.C. § 1409(a).

### 9 GENERAL ALLEGATIONS

10 5. USACM and its affiliated entities (referred to collectively herein as the "Debtors")  
11 filed for relief under Chapter 11 of the Bankruptcy Code on April 13, 2006.

12 6. Pre-petition, defendant, Gateway Stone Associates, LLC ("Gateway") obtained a  
13 loan (the "Gateway Loan") to finance the acquisition and conversion/remodeling of a rental  
14 property into a condominium project in Riverside County, California (the "Property").

15 7. The Gateway Loan was obtained through USACM, as agent and loan servicer for a  
16 group of direct lenders (the "Direct Lenders"). The Direct Lenders are a group consisting of  
17 approximately of 161 different individuals or entities.

18 8. The Gateway Loan arrangement was evidenced by a Loan Agreement dated  
19 November 10, 2005, between Gateway and the Direct Lenders (the "Loan Agreement"), a  
20 Promissory Note Secured by Deed of Trust dated November 18, 2005 (the "Promissory Note") in  
21 favor of the Direct Lenders in the sum of \$17,750,000.00, and a Deed of Trust, Assignment of  
22 Rents, Security Agreement and Fixture filing dated November 10, 2005 which was recorded in the  
23 Official Records of Riverside County, California on December 6, 2005 (the "Deed of Trust").

24 9. The Promissory Note was initially executed in favor of 161 Direct Lenders  
25 identified in Exhibit "A" to the Note ("Initial Direct Lenders") with an aggregate amount of funds  
26 of \$12,600,000.00.

27 10. The Direct Lenders executed Loan Servicing Agreements ("Loan Servicing  
28 Agreements") with USACM which authorized USACM to perform certain services in connection

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1 with arranging and servicing the Gateway Loan.

2 11. As such, the Direct Lenders had no direct contact with Gateway.

3 12. On or about December 1, 2005, the Initial Direct Lenders funded the initial loan  
4 amount \$12,600,000, defined in ¶3.1 of the Loan Agreement as the Loan Amount ("Loan  
5 Amount"), for the purchase of the Property, an origination fee and an interest reserve.

6 13. Pursuant to ¶3.2 of the Loan Agreement, "Lender and USACM have the exclusive  
7 right, but not the obligation, to increase the Loan Amount to an amount not to exceed Sixteen  
8 Million Two Hundred Thirty Thousand Dollars (\$16,230,000)" and, pursuant to ¶4.2 of the Loan  
9 Agreement, "Any obligation of the Lender or USA to make any additional advancements pursuant  
10 to Section 3.2 above, should the Lender or USA so elect, in their sole and absolute discretion, is  
11 subject to the following conditions:"

12 14. Pursuant to ¶8.15 of the Loan Agreement, all litigation between the parties must be  
13 brought in Clark County, Nevada.

14 15. Gateway has recently commenced a lawsuit in California state court, specifically  
15 Case No. RIC458088, in the Superior Court of California, County of Riverside (the "California  
16 Litigation"), against the Direct Lenders for breach of the Loan Agreement and the Promissory  
17 Note. A copy of the Complaint, without exhibits, is attached as **Exhibit "A."**

18 16. In the California Litigation, Gateway alleges that the Joseph Milanowski and Doug  
19 Esteves, as the duly authorized representatives of USA Capital, were aware that Gateway's  
20 borrowing needs included the purchase costs and the entitlement costs and that failing to fund the  
21 entitlement costs would significantly damage Gateway.

22 17. In the California Litigation, Gateway alleges that Joseph Milanowski and Doug  
23 Esteves, as the duly authorized representative of USA ital, fraudulently induced Gateway to  
24 execute the Loan Agreement, the Promissory Note and Deed of Trust and to accept the Loan.

25 18. On or about May 22, 2006, Gateway requested an additional advance of funds from  
26 USA.

27 19. USA has not advanced any additional funds and, pursuant to the terms of its  
28 mortgage lending license, may not request or arrange for any loans of additional funds from the

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1 Initial Direct Lenders or other individuals.

2 20. In the California Litigation, Gateway alleges that the Direct Lenders, “acting by  
3 and through their authorized agent, USA Capital”, by failing to make the additional advance, have  
4 breached an implied covenant of good faith and fair dealing.

5 21. USACM is not named as a defendant in the California Litigation.

6 22. The Direct Lenders named in the California Litigation are persons who were  
7 customers of USACM and parties to the Loan Servicing Agreements who will seek  
8 reimbursement, contribution, and other various claims from USACM for any expenses and/or  
9 damages they incur in the California Litigation.

10 23. Pursuant to the Loan Servicing Agreements, USACM may be required to provide  
11 representation for the Direct Lenders named in the Gateway Complaint.

12 24. The California Litigation will necessarily determine facts relating to USACM  
13 relationship with Gateway and the Direct Lenders.

14 25. Although not a party to the California Litigation, USACM will be required to  
15 participate in the discovery in the California Litigation and to monitor that litigation.

16 26. The California Litigation will affect the bankruptcy estate in a legally cognizable  
17 manner and threatens the integrity of USACM's bankruptcy estate.

18 **CAUSE OF ACTION**

19 **(INJUNCTIVE RELIEF)**

20 27. USACM repeats and re-alleges 1 through 26 as if fully set forth herein.

21 28. Although the automatic stay of 11 U.S.C. §362 prevents Gateway from initiating an  
22 action against USACM or the other Debtors, it does not automatically prevent the commencement  
23 or prosecution of an action against the Direct Lenders.

24 29. This Court may enjoin actions against non-debtors where such actions would have  
25 an adverse effect on a debtor's assets or estate pursuant to the broad powers of 11 U.S.C. §105(a).

26 30. The California Litigation by Gateway against the Direct Lenders will negatively  
27 affect USACM's bankruptcy estate in a legally cognizable manner and threatens the integrity of  
28 USACM's bankruptcy estate.

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1 31. If the Direct Lenders are required to defend an action brought by Gateway, it would  
2 be detrimental to USACM's estate and to the Debtors' creditors.

3 32. Even if no Debtors are named as defendants in an action brought by Gateway, the  
4 prosecution of the California Litigation against the Direct Lenders will require the participation of  
5 USACM.

6 33. The issuance of an injunction against the prosecution of the California litigation is  
7 in conformance with the objectives of the Bankruptcy Code.

8 34. The issuance of an injunction against the prosecution of the California litigation  
9 will prevent irreparable harm to the USACM bankruptcy estate and will do little immediate harm  
10 to Gateway.

11 35. The issuance of an injunction against the prosecution of the California litigation  
12 will promote the reorganization of USACM, such reorganization is likely, will not cause undue  
13 harm to Gateway and will promote the public purpose of allowing business reorganizations.

14 **SECOND CLAIM FOR RELIEF**  
15 **(DECLARATORY RELIEF)**

16 36. USACM repeats and re-alleges 1 through 35 as if fully set forth herein.

17 37. For reasons including but not limited to those stated herein, an actual dispute exists  
18 between USACM and Gateway, which parties have genuine and opposing interests, which  
19 interests are direct and substantial, and of which a judicial determination will be final and  
20 conclusive.

21 38. USACM seeks declaration relief that USACM did not fraudulently induce Gateway  
22 into taking the Gateway Loan, USACM did not violate any implied covenant of good faith and fair  
23 dealing, the Loan Agreement does not require USACM or the Direct Lenders from making any  
24 additional advances except in their sole and absolute discretion and that Gateway is required under  
25 the terms of the Loan Agreement to bring any litigation concerning the Loan in Clark County,  
26 Nevada.

27 **WHEREFORE**, USACM prays that this Court enjoin the prosecution by Gateway of the  
28 California Litigation or any other action against the Direct Lenders and a Declaratory Judgment

1 that USACM did not fraudulently induce Gateway into accepting the Gateway Loan, USACM did  
2 not violate any implied covenant of good faith and fair dealing, the Loan Agreement does not  
3 require USACM or the Direct Lenders from making any additional advances except in their sole  
4 and absolute discretion and that Gateway is required under the terms of the Loan Agreement to  
5 bring any litigation concerning the Loan in Clark County, Nevada and for such other relief that  
6 that this Court deems just and proper.

7 Dated: October 19, 2006

8 /s/ Lenard E. Schwartzer, Esq.

9 Lenard E. Schwartzer, Esq.

10 Jeanette E. McPherson, Esq.

11 Schwartzer & McPherson Law Firm

12 2850 South Jones Boulevard, Suite 1

13 Las Vegas, NV 89146

14 Attorneys for Plaintiff, USA Commercial Mortgage  
15 Company

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# **EXHIBIT “A”**



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Newport Beach, California 92660  
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Attorneys for Plaintiff GATEWAY STONE  
ASSOCIATES, LLC

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE  
OCT 04 2006

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

GATEWAY STONE ASSOCIATES, LLC, a  
Delaware limited liability company,

Plaintiff,

vs.

ARTHUR V. ADAMS, Trustee of the Arthur  
V. Adams Trust dated 9/12/97; HERMAN M.  
ADAMS, BRIAN M. ADAMS & ANTHONY  
G. ADAMS as Joint Tenants; KENNETH  
ADDES & VICTORIA ADDES, Co-Trustees  
of the Addes Trust; RONALD M. ADDY &  
PRISCILLA K. ADDY, husband and wife, as  
joint tenants with right of survivorship; ADIB  
M. AL-AWAR & ELLEN A. AL-AWAR,  
Trustees of the Al-Awar Living Trust dated  
04/05/01; ROBERT P. ANDERSON, Trustee  
of the Robert P. Anderson Revocable Living  
Trust dated 10/22/01; PENSCO TRUST  
COMPANY INC., Custodian for Robert S.  
Angel IRA; ROD ARBOGAST & DONNA  
ARBOGAST, Trustees of the Arbogast Family  
Trust; SHERRY ARCHER, an unmarried  
woman; A A SALAZAR MULTI SERVICES  
INC., Annabelle P. Arcilla, President; BERT  
E. ARNLUND, Trustee of the Bert E. Arnlund  
Charitable Remainder Unitrust dated 12/31/01;  
DELANA D. ARNOLD, a married woman  
dealing with her sole & separate property;

Case No.:

21C458088

**COMPLAINT FOR:**

1. **FRAUD;**
2. **BREACH OF IMPLIED  
COVENANT OF GOOD FAITH  
AND FAIR DEALING**

1 DARLENE ASHDOWN & VINCENT N.  
 2 GREENE, husband & wife, as joint tenants  
 3 with right of survivorship; MICHAEL K.M.  
 4 AU, a married man dealing with his sole and  
 5 separate property; BRUCE N. BARTON,  
 6 Trustee of the Barton Revocable Trust; BAY  
 7 AREA CAPITAL, LLC, an Oregon limited  
 8 liability company; ROBERT L. BENSON  
 9 AND MONA L. BENSON, husband and wife,  
 10 as joint tenants with the right of survivorship;  
 11 DAVID P. BETTERIDGE, a single man;  
 12 JERRY L. BLACKMAN, SR. AND  
 13 CAROLYN N. BLACKMAN LIVING  
 14 TRUST, Dated 11/26/01; MICHAEL S.  
 15 BLAU AND SHAMIRAN BLAU, husband  
 16 and wife, as joint tenants with the right of  
 17 survivorship; PATRICIA A. BOSCHETTO,  
 18 an unmarried woman; LARRY R.  
 19 BRASUELL & SUSAN L. BRASUELL,  
 20 Trustees of the Larry R. & Susan L. Brasuell  
 21 1996 Living Trust dated 7/22/96; DONALD E.  
 22 BRINEY, Trustee of the Briney Family  
 23 Exemption Trust dated 11/5/82; CHARLES R.  
 24 BROOKS AND WENDY S. BROOKS,  
 25 husband and wife, as joint tenants with right of  
 26 survivorship; C & B CATTLE COMPANY,  
 27 LLC, a Utah limited liability company; FIRST  
 28 SAVINGS BANK, Custodian for Edward  
 Burgess IRA; EUGENE W. CADY &  
 SANDRA L. CADY, Trustees of the Eugene  
 W. Cady & Sandra L. Cady Trust dated  
 9/24/85; PETER W. CAPONE & DEIDRE D.  
 CAPONE, husband & wife, as joint tenants  
 with right of survivorship; MAURICE A.  
 CAUCHOIS & JACQUELINE M.  
 CAUCHOIS, Trustees of the M & J Cauchois  
 Family Trust dated 2/25/93; STEFAN R.  
 CAVIN, Trustee of the Stefan R. Cavin  
 Revocable Living Trust dated 05/26/2004;  
 ELIO A. CHIAPPE AND GERALDINE N.  
 CHIAPPE, Trustees of the Chiappe Family  
 Trust dated 1/22/96; DONALD P. CLARK,  
 Trustee of the Donald P. Clark Family Trust  
 dated 10/25/94; DRS. RAYMOND J. CLAY,  
 JR. & JOAN MARIE CLAY, husband & wife,  
 as joint tenants with right of survivorship;

1 RAY L. COFFIN, a married man dealing with  
 2 his sole & separate property; PENNY LEE  
 3 COMSLA, Trustee of the Penny Lee Comsia  
 4 Revocable Trust UDT 4/10/00; JAMES A.  
 5 COY & MARGARET G. COY, Trustees of  
 6 the James A. Coy & Margaret G. Coy  
 7 Revocable Trust dated 9/27/00; LOYAL  
 8 CROWNOVER, Trustee of the Lora and Loyal  
 9 Crownover Family Trust; FIRST SAVINGS  
 10 BANK, Custodian for Robert J. D'Ambrosio  
 11 Contributory IRA; DEBORAH A. DANIEL, a  
 12 single woman; DAVIS INVESTMENTS, a  
 13 Nevada partnership; MARTIN A. DAVIS &  
 14 VIRGINIA LEE DAVIS, Trustees of the  
 15 Davis Family 2000 Trust; MARRICE L.  
 16 DAVIS AND NANCIE E. DAVIS, husband and  
 17 wife, as joint tenants with the right of  
 18 survivorship; ROBERT L. DE RUFF, Trustee  
 19 of the De Ruff 1988 Trust dated 4/25/88;  
 20 CYNTHIA DEVITO, a married woman;  
 21 THOMAS DI JORIO & ANTONETTE DI  
 22 JORIO, husband & wife; RICHARD E. DI  
 23 JORIO, Transfer on Death to Robert B. Di  
 24 Jorio; MARK A. DOLGINOFF, Trustee of the  
 25 Mark A. Dolginoff Separate Property Trust  
 26 dated 11/21/97 amended/restated on 5/10/00;  
 27 MICHAEL DONAHUE, a married man, as his  
 28 sole and separate property; GLENN M.  
 DONAHUE AND CARRIE DONAHUE,  
 Trustees of the Glenn & Carrie Donahue  
 Living Trust dated 4/30/94; WAYNE A.  
 DUTT & CYNTHIA DEANN DUTT,  
 Trustees of the Wayne A. Dutt Trust; MARK  
 L. EAMES & SANDY K. EAMES, husband  
 & wife, as joint tenants with the right of  
 survivorship; PIONEER ACCOUNTING &  
 INVESTMENTS, LLC, a Colorado LLC,  
 Christian Elbert, Manager; DAVID F.  
 ELDRIDGE AND ELFRIEDE R. FUJITANI,  
 husband and wife, as joint tenants with the  
 right of survivorship; ROBERT ESSAFF &  
 CINDY H. ESSAFF, Trustees of the Essaff  
 Family Trust dated 6/18/02; DENISE F.  
 FAGER, Trustee of the Denise F. Fager  
 Revocable Trust under agreement dated  
 2/28/03; MARGUERITE FALKENBORG,

1 Trustee of the Marguerite Falkenborg 2000  
 2 Trust dated 6/20/00; CHRISTOPHER J.  
 3 FERNANDES, a single man, and DIONISIO  
 4 A. FERNANDES, MD, a married man, as joint  
 5 tenants with right of survivorship; FIRST  
 6 SAVINGS BANK, Custodian for Nila Ganahl  
 7 SEP IRA; STANLEY C. GERMAIN &  
 8 DOROTHY GERMAIN, husband & wife, as  
 9 joint tenants with right of survivorship; FIRST  
 10 SAVINGS BANK, Custodian for Nancy R.  
 11 Gilmour IRA; JO M. GLEDHILL, Trustee of  
 12 the Gledhill Revocable Family Trust; JOHN  
 13 A. GODFREY, an individual; FIRST  
 14 SAVINGS BANK, Custodian for Alan Groh  
 15 IRA; MICHAEL HADJIGEORGALIS AND  
 16 BRENDA G. HADJIGEORGALIS, Husband  
 17 and wife as tenants in common; DANIEL R.  
 18 HALSETH & SANDRA K HALSETH,  
 19 Trustees of the Halseth Family Trust restated  
 20 4/21/00; CHARLES T. HAMM AND  
 21 SANDRA L. HAMM, Trustees of the Hamm  
 22 Trust dated 3/17/05; JOHN A. M. HANDAL,  
 23 a single man; FIRST SAVINGS BANK,  
 24 Custodian for John A. M. Handal IRA;  
 25 DWIGHT W. HAROUFF & MARY ANN  
 26 HAROUFF, Trustees of the Harouff  
 27 Charitable Remainder Trust 9/5/96; MARY  
 28 ANN HAROUFF AND DWIGHT W.  
 HAROUFF, Trustees of the Skip and Mary  
 Harouff Trust dated 12/5/95; T. CLAIRE  
 HARPER, Trustee of the Harper Family Trust  
 dated 2/28/84; JOHN D. HATHCOCK AND  
 SUSAN K. HATHCOCK, husband and wife,  
 as joint tenants with right of survivorship;  
 ROGER N. HAVEKOST, a married man  
 dealing with his sole & separate property;  
 RAYMOND G. HAWKINS, an unmarried  
 man; WALTER F. HENNINGSEN, Trustee of  
 the Walter F. Henningsen Revocable Trust  
 dated 2/18/03; LINDA M. HERDMAN,  
 Trustee for the Linda M. Herdman Family  
 Trust dated 12/11/03; EDWARD W.  
 HOMFELD, an unmarried man; FIRST  
 SAVINGS BANK, Custodian for George W.  
 Hubbard Roth IRA; RONALD A. JOHNSON,  
 Trustee of the Burgarello, Inc. Profit Sharing

1 Plan; FISCO VENTURES, LLC; a Nevada  
 2 limited liability company; K. KEN KANEDA  
 3 & BRIGITTE AREND-KANEDA, Trustees of  
 4 the Kaneda Living Trust dated 5/30/02;  
 5 STEWART KARLINSKY, a married man  
 6 dealing with his sole and separate property &  
 7 MARK WEISSMAN, a married man with his  
 8 sole and separate property, as joint tenants  
 9 with the right of survivorship; ARTHUR E.  
 10 KEBBLE & THELMA M. KEBBLE, Trustees  
 11 of the Arthur E. Keble & Thelma M. Keble  
 12 Family Trust dated 5/19/95; ROBERT J.  
 13 KEHL & RUTH ANN KEHL, husband &  
 14 wife, as joint tenants with right of  
 15 survivorship; FIRST SAVINGS BANK,  
 16 Custodian for Lindsey H. Kesler Jr. IRA;  
 17 NORMAN KIVEN, a married man dealing  
 18 with his sole & separate property; BERNARD  
 19 A. KLOENNE, Trustee of the Bernard  
 20 Kloenne Living Trust dated 10/10/86; L.V.  
 21 KNIGHT & MARGARET E. KNIGHT,  
 22 husband & wife, as joint tenants with right of  
 23 survivorship; MARCIA J. KNOX, Trustee of  
 24 the Marcia J. Knox Living Trust dated  
 25 8/16/04; FIRST SAVINGS BANK, Custodian  
 26 for Stephen V. Kowalski IRA; PAUL N.  
 27 KRON, Trustee of the Paul Kron Estate Trust  
 28 dtd 06/12/90; PAUL L. KWIATKOWSKI  
 AND COLITA JO KWIATKOWSKI, Trustees  
 of the Kwiatkowski Revocable Trust, dated  
 12/17/04; MELVIN LAMPH, Trustee of the  
 Melvin Lamph Trust dated 2/19/87; FIRST  
 SAVINGS BANK, Custodian for Donald  
 Lechman IRA; TERESA H. LEE, Trustee of  
 the William W. Lee & Teresa H. Lee 2003  
 Family Trust Agreement dated 6/26/03;  
 VERUSIO SOLUTIONS, LLC, an unknown  
 business entity; PHILIP LYONS & DORA  
 LYONS, Trustees of the Philip & Dora Lyons  
 Trust UA 8/9/99; THOMAS MARUNA AND  
 SAYURI MARUNA, husband and wife, as  
 joint tenants with the right of survivorship;  
 MORRIS MASSRY, a married man dealing  
 with his sole & separate property; KEVIN A.  
 MCKEE AND PAMELA J. MCKEE, husband  
 and wife, as joint tenants with right of



1 survivorship; RICHARD MCKNIGHT AND  
 2 SHEILA J. MCKNIGHT, Trustees of the  
 McKnight 2000 Family Trust, dated 4/20/00;  
 3 DALE J. MCMULLAN, Trustee of the  
 McMullan Living Trust dated 8/19/94; GARY  
 4 A. MICHELSEN, an unmarried man; JOHN E.  
 MICHELSEN, Trustee of the John E.  
 5 Michelsen Family Trust dated 11/75;  
 6 MONIGHETTI, INC., a Nevada corporation;  
 MUKS REALTY, LLC, a California limited  
 7 liability company; WILLIAM RICHARD  
 MORENO, a married man as his sole &  
 8 separate property; ANNE MARIE MUELLER,  
 9 Trustee of the Anne Marie Mueller Trust;  
 DANIEL D. NEWMAN, Trustee of the Daniel  
 10 D. Newman Trust dated 11/1/92; MARVIN L.  
 11 NICOLA, Trustee of the Marvin Lynn Nicola  
 Family Trust dated 6/13/78; ALLEN N.  
 12 NIRENSTEIN & DOROTHY H.  
 NIRENSTEIN, Trustees of the Allen M.  
 13 Nirenstein & Dorothy H. Nirenstein 1992  
 Revocable Trust dated 3/4/92; JOHN E.  
 14 O'RIORDAN & SONHILD A. O'RIORDAN,  
 15 husband & wife, as joint tenants with the right  
 of survivorship; MARY ESTHER OATES,  
 16 transfer on death to Linda Mueller; ROBERT  
 17 L. OGREN, Trustee of the Robert L. Ogren  
 Trust dated 6/30/92 (Acct#2); PHILIP A.  
 18 PALMINTERE & Nanci S. PALMINTERE,  
 19 Trustees of the Palminteri Revocable Trust  
 dated 6/19/98; LOWELL ARTHUR  
 20 PAULSEN AND SHERRI LYNN PAULSEN,  
 Trustees of The Paulsen Family Trust Under  
 21 Agreement June 25, 1992; ROBERT H.  
 22 PERLMAN & LYNN R. PERLMAN, Trustees  
 of the Robert H. Perlman & Lynn R. Perlman  
 23 Trust dated 9/17/92; BETTY J. PHENIX, a  
 married woman dealing with her sole &  
 24 separate property; ALI PIRANI AND  
 25 ANISHA PIRANI, husband and wife, as joint  
 tenants with the right of survivorship; JACK  
 26 POLEN, Trustee of the Jack & Gladys Polen  
 Family Trust dated 6/28/88; SYDNEY  
 27 QUINN, a married woman dealing with her  
 sole & separate property; DENNIS RAGGI, a  
 28 married man dealing with his sole & separate

1 property; LEONARD J. RAMOS &  
 2 CLAUDIA C. RAMOS, Trustees of the  
 3 Ramos Family Trust dated 8/27/97; FIRST  
 4 SAVINGS BANK, Custodian For Manuel G.  
 5 Rice IRA; ARGUEDA R. ROBBIE A/K/A  
 6 EDA ROBBIE, Trustee of the Eda Robbie  
 7 Survivor Trust dated 5/22/03; CASSANDRA  
 8 J. ROBBINS, an unmarried woman; ALAN  
 9 ROBINSON & GAIL ROBINSON, husband  
 10 & wife, as joint tenants with right of  
 11 survivorship; SAUL ROISENTUL & ILENE  
 12 ROISENTUL, Trustees of the Roisentul  
 13 Family Trust; SHEILA ROTHBERG, a  
 14 married woman dealing with her sole &  
 15 separate property; NICOLAS J. SANTORO  
 16 AND JUANITA SANTORO, Trustees of the  
 17 Santoro Family Trust U/T/D 4/29/02; FIRST  
 18 SAVINGS BANK, Custodian for Nancy C.  
 19 Serino IRA; DENNIS SIPIORSKI & DONNA  
 20 SIPIORSKI, husband & wife, as joint tenants  
 21 with right of survivorship; JON RENO  
 22 SIRRINE, Trustee of the Sirrene Trust dated  
 23 1/28/93; JOYCE E. SMITH, Trustee of the  
 24 Joyce E. Smith Trust dated 11/3/99; BRUCE  
 25 SONNENBERG & ROSEMARY  
 26 SONNENBERG, husband & wife, as joint  
 27 tenants with right of survivorship; ROBERT S.  
 28 SPECKERT, Trustee of the Robert S. Speckert  
 Rev. Living Trust dated 6/11/92; T. DWIGHT  
 SPER & BONNIE J. SPER, Trustees of the  
 T.D.S. Revocable Family Trust dated 9/29/98;  
 BRETT W. SPERRY, an unmarried man;  
 WILLIAM SPITZNER & KATHLEEN  
 SPITZNER, husband & wife, as joint tenants  
 with right of survivorship; DUANE  
 STEWARD AND DIANE J. STEWARD,  
 husband and wife, as joint tenants with the  
 right of survivorship; FIRST SAVINGS  
 BANK, Custodian for Allison Sullivan IRA;  
 DR. CAROLE TALAN, an unmarried woman;  
 LUTHER E. TATE, an unmarried man;  
 NORMAN TEETER, a single man; FIRST  
 SAVINGS BANK, Custodian For Louise  
 Teeter IRA Rollover; SIGMUND L.  
 TOMCZAK & DIANA TOMCZAK, Trustees  
 of the Tomczak Family Trust dated 4/25/83;

1 ROBERT C. TOOMBES AND PATSY G.  
 2 TOOMBES, husband and wife, as joint tenants  
 3 with the right of survivorship; A'CHUN LIN  
 4 TSAI, an unmarried woman; DAVID C.  
 5 WAHL AND MARGARET A. WAHL,  
 6 husband and wife, as joint tenants with the  
 7 right of survivorship; BRUCE D. WALLACE,  
 8 Trustee of the B.D.W. 1987 Trust dated  
 9 9/29/87; ADRIAN P. WALTON & AMY J.  
 10 WALTON, husband & wife, as joint tenants  
 11 with right of survivorship; DAMON PAUL  
 12 WALTON & REBECCA JEAN WALTON,  
 13 husband & wife, as joint tenants with right of  
 14 survivorship; DIANA F. WEILAND, Trustee  
 15 for the benefit of Gerald R. Weiland & Diana  
 16 F. Weiland Trust; IRA SERVICES/FIRST  
 17 REGIONAL BANK, For the benefit of Dale  
 18 Westerhout IRA; LINDA WIMSATT, Trustee  
 19 for the Wimsatt Trust dated October 19, 2004;  
 20 JULIET WONG, a single woman; and DOES  
 21 1 through 20, Inclusive,

22 Defendants.

## 23 PARTIES

24 1. At all times herein mentioned, Plaintiff GATEWAY STONE ASSOCIATES,  
 25 LLC, ("Gateway"), was, and is, a Delaware limited liability company duly organized and  
 26 existing under the laws of the State of Delaware, and authorized to conduct business in the State  
 27 of California.

28 2. Plaintiff is informed and believes, and based thereon alleges, that at all times  
 herein mentioned, each of the following parties owns a fractionalized interest in the deed of trust  
 that is the subject of this action: ARTHUR V. ADAMS, Trustee of the Arthur V. Adams Trust  
 dated 9/12/97; HERMAN M. ADAMS, BRIAN M. ADAMS & ANTHONY G. ADAMS as  
 Joint Tenants; KENNETH ADDES & VICTORIA ADDES, Co-Trustees of the Addes Trust;



1 RONALD M. ADDY & PRISCILLA K. ADDY, husband and wife, as joint tenants with right of  
2 survivorship; ADIB M. AL-AWAR & ELLEN A. AL-AWAR, Trustees of the Al-Awar Living  
3 Trust dated 04/05/01; ROBERT P. ANDERSON, Trustee of the Robert P. Anderson Revocable  
4 Living Trust dated 10/22/01; PENSICO TRUST COMPANY INC., Custodian for Robert S.  
5 Angel IRA; ROD ARBOGAST & DONNA ARBOGAST, Trustees of the Arbogast Family  
6 Trust; SHERRY ARCHER, an unmarried woman; A A SALAZAR MULTI SERVICES INC.,  
7 Annabelle P. Arcilla, President; BERT E. ARNLUND, Trustee of the Bert E. Arnlund Charitable  
8 Remainder Unitrust dated 12/31/01; DELANA D. ARNOLD, a married woman dealing with her  
9 sole & separate property; DARLENE ASHDOWN & VINCENT N. GREENE, husband & wife,  
10 as joint tenants with right of survivorship; MICHAEL K.M. AU, a married man dealing with his  
11 sole and separate property; BRUCE N. BARTON, Trustee of the Barton Revocable Trust; BAY  
12 AREA CAPITAL, LLC, an Oregon limited liability company; ROBERT L. BENSON AND  
13 MONA L. BENSON, husband and wife, as joint tenants with the right of survivorship; DAVID  
14 P. BETTERIDGE, a single man; JERRY L. BLACKMAN, SR. AND CAROLYN N.  
15 BLACKMAN LIVING TRUST, Dated 11/26/01; MICHAEL S. BLAU AND SHAMIRAN  
16 BLAU, husband and wife, as joint tenants with the right of survivorship; PATRICIA A.  
17 BOSCHETTO, an unmarried woman; LARRY R. BRASUELL & SUSAN L. BRASUELL,  
18 Trustees of the Larry R. & Susan L. Brasuell 1996 Living Trust dated 7/22/96; DONALD E.  
19 BRINEY, Trustee of the Briney Family Exemption Trust dated 11/5/82; CHARLES R.  
20 BROOKS AND WENDY S. BROOKS, husband and wife, as joint tenants with right of  
21 survivorship; C & B CATTLE COMPANY, LLC, a Utah limited liability company; FIRST  
22 SAVINGS BANK, Custodian for Edward Burgess IRA; EUGENE W. CADY & SANDRA L.  
23 CADY, Trustees of the Eugene W. Cady & Sandra L. Cady Trust dated 9/24/85; PETER W.  
24 CAPONE & DEIDRE D. CAPONE, husband & wife, as joint tenants with right of survivorship;  
25 MAURICE A. CAUCHOIS & JACQUELINE M. CAUCHOIS, Trustees of the M & J Cauchois  
26 Family Trust dated 2/25/93; STEFAN R. CAVIN, Trustee of the Stefan R. Cavin Revocable  
27 Living Trust dated 05/26/2004; ELIO A. CHIAPPE AND GERALDINE N. CHIAPPE, Trustees  
28 of the Chiappe Family Trust dated 1/22/96; DONALD P. CLARK, Trustee of the Donald P.

1 Clark Family Trust dated 10/25/94; DRS. RAYMOND J. CLAY, JR. & JOAN MARIE CLAY,  
 2 husband & wife, as joint tenants with right of survivorship; RAY L. COFFIN, a married man  
 3 dealing with his sole & separate property; PENNY LEE COMSLA, Trustee of the Penny Lee  
 4 Comsia Revocable Trust UDT 4/10/00; JAMES A. COY & MARGARET G. COY, Trustees of  
 5 the James A. Coy & Margaret G. Coy Revocable Trust dated 9/27/00; LOYAL CROWNOVER,  
 6 Trustee of the Lora and Loyal Crownover Family Trust; FIRST SAVINGS BANK, Custodian  
 7 for Robert J. D'Ambrosio Contributory IRA; DEBORAH A. DANIEL, a single woman; DAVIS  
 8 INVESTMENTS, a Nevada partnership; MARTIN A. DAVIS & VIRGINIA LEE DAVIS,  
 9 Trustees of the Davis Family 2000 Trust; MARRICE L. DAVIS AND Nanci E. DAVIS,  
 10 husband and wife, as joint tenants with the right of survivorship; ROBERT L. DE RUFF, Trustee  
 11 of the De Ruff 1988 Trust dated 4/25/88; CYNTHIA DEVITO, a married woman; THOMAS DI  
 12 JORIO & ANTONETTE DI JORIO, husband & wife; RICHARD E. DI JORIO, Transfer on  
 13 Death to Robert B. Di Jorio; MARK A. DOLGINOFF, Trustee of the Mark A. Dolginoff  
 14 Separate Property Trust dated 11/21/97 amended/restated on 5/10/00; MICHAEL DONAHUE, a  
 15 married man, as his sole and separate property; GLENN M. DONAHUE AND CARRIE  
 16 DONAHUE, Trustees of the Glenn & Carrie Donahue Living Trust dated 4/30/94; WAYNE A.  
 17 DUTT & CYNTHIA DEANN DUTT, Trustees of the Wayne A. Dutt Trust; MARK L. EAMES  
 18 & SANDY K. EAMES, husband & wife, as joint tenants with the right of survivorship;  
 19 PIONEER ACCOUNTING & INVESTMENTS, LLC, a Colorado LLC, Christian Elbert,  
 20 Manager; DAVID F. ELDRIDGE AND ELFRIEDE R. FUJITANI, husband and wife, as joint  
 21 tenants with the right of survivorship; ROBERT ESSAFF & CINDY H. ESSAFF, Trustees of  
 22 the Essaff Family Trust dated 6/18/02; DENISE F. FAGER, Trustee of the Denise F. Fager  
 23 Revocable Trust under agreement dated 2/28/03; MARGUERITE FALKENBORG, Trustee of  
 24 the Marguerite Falkenborg 2000 Trust dated 6/20/00; CHRISTOPHER J. FERNANDES, a  
 25 single man, and DIONISIO A. FERNANDES, MD, a married man, as joint tenants with right of  
 26 survivorship; FIRST SAVINGS BANK, Custodian for Nila Ganahl SEP IRA; STANLEY C.  
 27 GERMAIN & DOROTHY GERMAIN, husband & wife, as joint tenants with right of  
 28 survivorship; FIRST SAVINGS BANK, Custodian for Nancy R. Gilmour IRA; JO M.

1 GLEDHILL, Trustee of the Gledhill Revocable Family Trust; JOHN A. GODFREY, an  
 2 individual; FIRST SAVINGS BANK, Custodian for Alan Groh IRA; MICHAEL  
 3 HADJIGEORGALIS AND BRENDA G. HADJIGEORGALIS, Husband and wife as tenants in  
 4 common; DANIEL R. HALSETH & SANDRA K HALSETH, Trustees of the Halseth Family  
 5 Trust restated 4/21/00; CHARLES T. HAMM AND SANDRA L. HAMM, Trustees of the  
 6 Hamm Trust dated 3/17/05; JOHN A. M. HANDAL, a single man; FIRST SAVINGS BANK,  
 7 Custodian for John A. M. Handal IRA; DWIGHT W. HAROUFF & MARY ANN HAROUFF,  
 8 Trustees of the Harouff Charitable Remainder Trust 9/5/96; MARY ANN HAROUFF AND  
 9 DWIGHT W. HAROUFF, Trustees of the Skip and Mary Harouff Trust dated 12/5/95; T.  
 10 CLAIRE HARPER, Trustee of the Harper Family Trust dated 2/28/84; JOHN D. HATHCOCK  
 11 AND SUSAN K. HATHCOCK, husband and wife, as joint tenants with right of survivorship;  
 12 ROGER N. HAVEKOST, a married man dealing with his sole & separate property; RAYMOND  
 13 G. HAWKINS, an unmarried man; WALTER F. HENNINGSEN, Trustee of the Walter F.  
 14 Henningsen Revocable Trust dated 2/18/03; LINDA M. HERDMAN, Trustee for the Linda M.  
 15 Herdman Family Trust dated 12/11/03; EDWARD W. HOMFELD, an unmarried man; FIRST  
 16 SAVINGS BANK, Custodian for George W. Hubbard Roth IRA; RONALD A. JOHNSON,  
 17 Trustee of the Burgarello, Inc. Profit Sharing Plan; FISCO VENTURES, LLC; a Nevada limited  
 18 liability company; K. KEN KANEDA & BRIGITTE AREND-KANEDA, Trustees of the  
 19 Kaneda Living Trust dated 5/30/02; STEWART KARLINSKY, a married man dealing with his  
 20 sole and separate property & MARK WEISSMAN, a married man with his sole and separate  
 21 property, as joint tenants with the right of survivorship; ARTHUR E. KEBBLE & THELMA M.  
 22 KEBBLE, Trustees of the Arthur E. Kebble & Thelma M. Kebble Family Trust dated 5/19/95;  
 23 ROBERT J. KEHL & RUTH ANN KEHL, husband & wife, as joint tenants with right of  
 24 survivorship; FIRST SAVINGS BANK, Custodian for Lindsey H. Kesler Jr. IRA; NORMAN  
 25 KIVEN, a married man dealing with his sole & separate property; BERNARD A. KLOENNE,  
 26 Trustee of the Bernard Kloenne Living Trust dated 10/10/86; L.V. KNIGHT & MARGARET E.  
 27 KNIGHT, husband & wife, as joint tenants with right of survivorship; MARCIA J. KNOX,  
 28 Trustee of the Marcia J. Knox Living Trust dated 8/16/04; FIRST SAVINGS BANK, Custodian

1 for Stephen V. Kowalski IRA; PAUL N. KRON, Trustee of the Paul Kron Estate Trust dtd  
 2 06/12/90; PAUL L. KWIATKOWSKI AND COLITA JO KWIATKOWSKI, Trustees of the  
 3 Kwiatkowski Revocable Trust, dated 12/17/04; MELVIN LAMPH, Trustee of the Melvin  
 4 Lamph Trust dated 2/19/87; FIRST SAVINGS BANK, Custodian for Donald Lechman IRA;  
 5 TERESA H. LEE, Trustee of the William W. Lee & Teresa H. Lee 2003 Family Trust  
 6 Agreement dated 6/26/03; VERUSIO SOLUTIONS, LLC, an unknown business entity; PHILIP  
 7 LYONS & DORA LYONS, Trustees of the Philip & Dora Lyons Trust UA 8/9/99; THOMAS  
 8 MARUNA AND SAYURI MARUNA, husband and wife, as joint tenants with the right of  
 9 survivorship; MORRIS MASSRY, a married man dealing with his sole & separate property;  
 10 KEVIN A. MCKEE AND PAMELA J. MCKEE, husband and wife, as joint tenants with right of  
 11 survivorship; RICHARD MCKNIGHT AND SHEILA J. MCKNIGHT, Trustees of the  
 12 McKnight 2000 Family Trust, dated 4/20/00; DALE J. MCMULLAN, Trustee of the McMullan  
 13 Living Trust dated 8/19/94; GARY A. MICHELSEN, an unmarried man; JOHN E.  
 14 MICHELSEN, Trustee of the John E. Michelsen Family Trust dated 11/75; MONIGHETTI,  
 15 INC., a Nevada corporation; MUKS REALTY, LLC, a California limited liability company;  
 16 WILLIAM RICHARD MORENO, a married man as his sole & separate property; ANNE  
 17 MARIE MUELLER, Trustee of the Anne Marie Mueller Trust; DANIEL D. NEWMAN, Trustee  
 18 of the Daniel D. Newman Trust dated 11/1/92; MARVIN L. NICOLA, Trustee of the Marvin  
 19 Lynn Nicola Family Trust dated 6/13/78; ALLEN N. NIRENSTEIN & DOROTHY H.  
 20 NIRENSTEIN, Trustees of the Allen M. Nirenstein & Dorothy H. Nirenstein 1992 Revocable  
 21 Trust dated 3/4/92; JOHN E. O'RIORDAN & SONHILD A. O'RIORDAN, husband & wife, as  
 22 joint tenants with the right of survivorship; MARY ESTHER OATES, transfer on death to Linda  
 23 Mueller; ROBERT L. OGREN, Trustee of the Robert L. Ogren Trust dated 6/30/92 (Acct#2);  
 24 PHILIP A. PALMINTERE & Nanci S. PALMINTERE, Trustees of the Palminteri Revocable  
 25 Trust dated 6/19/98; LOWELL ARTHUR PAULSEN AND SHERRI LYNN PAULSEN,  
 26 Trustees of The Paulsen Family Trust Under Agreement June 25, 1992; ROBERT H.  
 27 PERLMAN & LYNN R. PERLMAN, Trustees of the Robert H. Perlman & Lynn R. Perlman  
 28 Trust dated 9/17/92; BETTY J. PHENIX, a married woman dealing with her sole & separate



1 property; ALI PIRANI AND ANISHA PIRANI, husband and wife, as joint tenants with the right  
 2 of survivorship; JACK POLEN, Trustee of the Jack & Gladys Polen Family Trust dated 6/28/88;  
 3 SYDNEY QUINN, a married woman dealing with her sole & separate property; DENNIS  
 4 RAGGI, a married man dealing with his sole & separate property; LEONARD J. RAMOS &  
 5 CLAUDIA C. RAMOS, Trustees of the Ramos Family Trust dated 8/27/97; FIRST SAVINGS  
 6 BANK, Custodian For Manuel G. Rice IRA; ARGUEDA R. ROBBIE A/K/A EDA ROBBIE,  
 7 Trustee of the Eda Robbie Survivor Trust dated 5/22/03; CASSANDRA J. ROBBINS, an  
 8 unmarried woman; ALAN ROBINSON & GAIL ROBINSON, husband & wife, as joint tenants  
 9 with right of survivorship; SAUL ROISENTUL & ILENE ROISENTUL, Trustees of the  
 10 Roisentul Family Trust; SHEILA ROTHBERG, a married woman dealing with her sole &  
 11 separate property; NICOLAS J. SANTORO AND JUANITA SANTORO, Trustees of the  
 12 Santoro Family Trust U/T/D 4/29/02; FIRST SAVINGS BANK, Custodian for Nancy C. Serino  
 13 IRA; DENNIS SIPIORSKI & DONNA SIPIORSKI, husband & wife, as joint tenants with right  
 14 of survivorship; JON RENO SIRRINE, Trustee of the Sirrene Trust dated 1/28/93; JOYCE E.  
 15 SMITH, Trustee of the Joyce E. Smith Trust dated 11/3/99; BRUCE SONNENBERG &  
 16 ROSEMARY SONNENBERG, husband & wife, as joint tenants with right of survivorship;  
 17 ROBERT S. SPECKERT, Trustee of the Robert S. Speckert Rev. Living Trust dated 6/11/92; T.  
 18 DWIGHT SPER & BONNIE J. SPER, Trustees of the T.D.S. Revocable Family Trust dated  
 19 9/29/98; BRETT W. SPERRY, an unmarried man; WILLIAM SPITZNER & KATHLEEN  
 20 SPITZNER, husband & wife, as joint tenants with right of survivorship; DUANE STEWARD  
 21 AND DIANE J. STEWARD, husband and wife, as joint tenants with the right of survivorship;  
 22 FIRST SAVINGS BANK, Custodian for Allison Sullivan IRA; DR. CAROLE TALAN, an  
 23 unmarried woman; LUTHER E. TATE, an unmarried man; NORMAN TEETER, a single man;  
 24 FIRST SAVINGS BANK, Custodian For Louise Teeter IRA Rollover; SIGMUND L.  
 25 TOMCZAK & DIANA TOMCZAK, Trustees of the Tomczak Family Trust dated 4/25/83;  
 26 ROBERT C. TOOMBES AND PATSY G. TOOMBES, husband and wife, as joint tenants with  
 27 the right of survivorship; A'CHUN LIN TSAI, an unmarried woman; DAVID C. WAHL AND  
 28 MARGARET A. WAHL, husband and wife, as joint tenants with the right of survivorship;

1 BRUCE D. WALLACE, Trustee of the B.D.W. 1987 Trust dated 9/29/87; ADRIAN P.  
 2 WALTON & AMY J. WALTON, husband & wife, as joint tenants with right of survivorship;  
 3 DAMON PAUL WALTON & REBECCA JEAN WALTON, husband & wife, as joint tenants  
 4 with right of survivorship; DIANA F. WEILAND, Trustee for the benefit of Gerald R. Weiland  
 5 & Diana F. Weiland Trust; IRA SERVICES/FIRST REGIONAL BANK, For the benefit of Dale  
 6 Westerhout IRA; LINDA WIMSATT, Trustee for the Wimsatt Trust dated October 19, 2004;  
 7 and JULIET WONG, a single woman (hereinafter collectively referred to as "Defendants").

8 3. Plaintiff is unaware of the true names and capacities, whether individual,  
 9 corporate, partnership or otherwise, of Defendants Does 1 through 20, inclusive, and therefore  
 10 sues the Defendants by such fictitious names. Plaintiff is informed and believes and on that basis  
 11 alleges, that each of the fictitiously named Defendants is, in some manner, responsible for the  
 12 events and happenings referred to herein, either contractually or tortuously. When Plaintiff  
 13 ascertains the true names and capacities of Does 1 through 20, it will amend this Complaint  
 14 accordingly. (Some or all of the named Defendant and Does 1 through 20 are sometimes  
 15 collectively included in the reference to "Defendants.")

16 4. Plaintiff is informed and believes, and on that basis alleges, that each Defendant  
 17 is, and at all times pertinent hereto was, the agent, servant, employee, joint venturer, and/or  
 18 partner of each of the other Defendants, and in doing the things alleged herein, each Defendant  
 19 was acting within the scope of the authority conferred upon that party by consent, approval  
 20 and/or ratification of each of the other Defendants, whether said authority was actual or apparent.

### 21 22 GENERAL ALLEGATIONS

23 5. Plaintiff is a Delaware limited liability company that acquired certain real  
 24 property described on the attached Exhibit "A" ("the Property") for the purpose of thereafter  
 25 improving the Property.

26 6. Defendants are a group of individuals, trusts, associations, or other interests  
 27 which, pursuant to the terms of a Loan Servicing Agreement (the "LSA") collectively through  
 28 their duly authorized agent, USA Commercial Mortgage Company ("USA Capital"), entered into

1 a lending arrangement with the Plaintiff for the acquisition and development of the Property.  
2 USA Capital was authorized by each of the Defendants to undertake such actions, enter into such  
3 arrangements, and otherwise to perform such acts as were necessary or appropriate to enter into  
4 lending relationships with borrowers solicited and obtained by USA Capital including, in this  
5 instance, the Plaintiff. At all times pertinent, USA Capital was the duly authorized agent of the  
6 Defendants for any and all purposes relating to such lending relationships, including that with  
7 Plaintiff.

8 7. The Defendants are subject to the jurisdiction of this Court pursuant to California  
9 Code of Civil Procedure § 410.10 as they have owned, used, possessed, or held a mortgage or  
10 other lien on real property within this State, and/or breached a contract in this State by failing to  
11 perform acts required by the contract to be performed in this State, and the causes of action  
12 asserted herein relate to such acts.

13 8. Moreover, and as more fully explained hereafter, the forum selection clause  
14 contained in paragraph 18 of the Promissory Note dated November 18, 2005, entered into by and  
15 between Plaintiff and the Defendants (the "Promissory Note"), a true and correct copy of which  
16 is attached hereto as Exhibit "B," and contained in the Loan Agreement dated November 18,  
17 2005, a true and correct copy of which is attached hereto as Exhibit "C," are unenforceable and  
18 inapplicable under these facts and circumstances because, among other things, the forum  
19 selection clauses were non-negotiated, mandatory provisions in the USA Capital and the  
20 Defendants' form agreements; enforcement would violate the public policy of this State; and  
21 enforcement would transfer an essentially local dispute (ultimately, a foreclosure action and  
22 claims related thereto) to an inconvenient and inappropriate forum in order to seriously  
23 inconvenience and prejudice the Plaintiff. Therefore, the Defendants are subject to the  
24 jurisdiction of, and venue in, this Court.

25 9. Venue is appropriate in this Court because the Property that is subject to this  
26 action is located in the County of Riverside.  
27  
28

**FACTUAL BACKGROUND**

10. Among other potential lending sources approached by the Plaintiff, in or about the Fall 2005, Plaintiff approached the authorized agents of USA Capital (itself the duly authorized agent and representative of the Defendants) to discuss the obtaining of a loan sufficient to undertake entitlement costs and development to improve the use of the Property.

11. Over the course of the next several months, negotiations continued between the representatives of the Plaintiff, and the duly authorized representatives and agents of USA Capital, including, without limitation Joseph Milanowski ("Milanowski") and Doug Esteves ("Esteves"). At all times during such ongoing negotiations, Milanowski, Esteves, and the other authorized agents and representatives of USA Capital (itself the duly authorized agent and representative of the Defendants) were well aware that Plaintiff's borrowing needs consisted of entitlement costs (for example, costs for consultants, engineers, planners and attorneys) in order to make the project feasible and viable, and that funding of these costs would be required in order for the Plaintiff to utilize the Defendants (acting through their authorized agent, USA Capital) as the lending source rather than other potential lending sources.

12. As Milanowski, Esteves, and the other duly authorized agents and representatives of USA Capital (itself the duly authorized agent and representative of Defendants) well knew, Plaintiff would undertake entitlement costs on the Property.

13. Milanowski, Esteves, and the other duly authorized agents and representatives of USA Capital (itself the duly authorized agent and representative of Defendants) also well knew that the failure to fund all of the requested loan would significantly harm and damage Plaintiff, prohibit development on the Property, and would, in effect, destroy the purpose for which the loan was taken.

14. At all times throughout the negotiations, Milanowski, Esteves, and the other duly authorized agents and representatives of USA Capital (itself the duly authorized agent and representative of Defendants) promised and assured the Plaintiff that the entire amount needed to undertake development of the Property would in fact be funded. Based upon the commitment of the Defendants, action through their duly authorized agent and representative, USA Capital,



1 Plaintiff agreed to enter into a lending arrangement with the Defendants which would prove an  
2 amount sufficient to commercially develop on the Property.

3 15. In order to evidence the agreed lending relationship between the Defendants,  
4 acting by and through their authorized agent and representative, USA Capital, and the Plaintiff,  
5 the following documents, among others, were executed:

6 (a) That certain Promissory Note Secured By Deed of Trust dated  
7 November 18, 2005 in the principal amount of \$12,600,000 (See,  
8 Exhibit "B");

9 (b) The Loan Agreement dated November 18, 2005 (Attached hereto as  
10 Exhibit "C");

11 (c) The Deed of Trust (Attached hereto as Exhibit "D"); and

12 (d) An Agreement (Attached hereto as Exhibit "E").

13 (collectively referred to as "the Loan Documents").  
14

15 16. Notwithstanding the date on the Loan Documents, no portion of the loan was  
16 actually funded on November 18, 2005. To the contrary, the actual loan closing, and the initial  
17 disbursement of any loan proceeds did not occur until December 1, 2005. A true and correct  
18 copy of the Loan Closing Statement dated December 1, 2005 is attached hereto and incorporated  
19 herein as Exhibit "F."

20 17. The Loan Agreement, in paragraph 3.2, provide for the advancing of further funds  
21 up to the amount of \$16,230,000.00, and other portions of the Loan Agreement provided  
22 procedures and mechanisms by which such additional advances were to be undertaken, and  
23 otherwise addressed lending issues and practices applicable only to advancing additional funds.

24 18. Plaintiff paid fees, points, and interest based on the full loan amount of  
25 \$16,230,000.00. Once any amount was funded after the Initial Loan Amount, the entire  
26 remainder would be required to be funded. USA Capital committed to advance to Plaintiff the  
27 full amount of \$16,230,000.00 (See "Agreement," attached hereto as Exhibit "E").  
28

1           19. Shortly after, if not simultaneous with, the funding of the Initial Loan Amount  
2 (i.e. the \$12,600,000.00 shown on the Closing Statement), the Defendants advanced the first  
3 portion of the funding in the amount of \$12,600,000.00 in accordance with the Loan Agreement  
4 (See, Exhibit "C"). The advance of this amount was in furtherance of, and consistent with, the  
5 representations of Milanowski, Esteves, and the other duly authorized agents and representatives  
6 of USA Capital (itself the duly authorized agent and representative of Defendants) that the loan  
7 in its entirety would be funded (in accordance with the Loan Documents).

8           20. After receiving the initial disbursement of funds from Defendants, Plaintiff  
9 commenced development on the Property. As had been well known to all parties from the time  
10 the loan first began to be negotiated forward, such development required ongoing services of  
11 consultants, engineers, planner and attorneys, which would then lead, if not paid, to the  
12 imposition of varieties of liens upon the Property, the commencement of litigation, and the  
13 inevitable cessation of development.

14           21. Notwithstanding the implicit representations and commitments made by  
15 Milanowski, Esteves, and the other duly authorized agents and representatives of USA Capital  
16 (itself the duly authorized agent and representative of Defendants) of financial strength and  
17 stability, and unbeknownst to Plaintiff, USA Capital, and its affiliated entities, including, without  
18 limitation, USA Capital First Trust Deed Fund, LLC (the "Fund"), were then in dire financial  
19 straights, with an ever-worsening financial condition. Unbeknownst to Plaintiff, USA Capital  
20 had apparently, among other things, pooled monies received as payments on various loans, and  
21 disbursed such amounts to investors on all loans regardless of the source of the actual payment;  
22 had compromised the total amount of certain indebtedness, or, at least, had not remitted the  
23 applicable amounts to the investors on any specific loan; had released collateral or compromised  
24 or satisfied certain debts without the knowledge of or payment to the applicable investors; and/or  
25 had engaged in other acts and practices, including the diversion of funds, from the appropriate,  
26 ultimate payee.

27           22. Upon information and belief, by the time the documents evidencing the lending  
28 arrangement between Plaintiff and Defendants were executed in November 2005, and certainly

1 by the time of the disbursement of the Initial Loan Amount to Plaintiff, the authorized agents and  
2 representatives, including Milanowski and Esteves of USA Capital (which itself was acting as  
3 the duly authorized agent and representative of Defendants) were well aware of the dire financial  
4 straights in which USA Capital and its affiliated entities, including the Trust, then existed; that  
5 existing management, including Milanowski, was likely to be replaced (and in fact has now has  
6 been replaced by Thomas Allison, Chief Restructuring Officer of Mesirow Interim Financial  
7 Management, LLC) and that the filing of bankruptcy was likely, if not imminent. All such  
8 authorized representatives and agents likewise knew that, upon the filing of bankruptcy, or  
9 simply because of the deteriorating financial condition of USA Capital and its affiliated entities,  
10 that the ultimate funding of the full loan amount of \$16,230,000.00 would not likely occur.  
11 Notwithstanding such knowledge, the authorized agents and representatives of USA Capital  
12 (itself the duly authorized agent and representative of Defendants) induced Plaintiff to close on  
13 the Loan Documents and to commence development on the Property, knowing the damage that  
14 would ensue from the later failure to fund. Upon information and belief, USA Capital, the duly  
15 authorized agent and representative of the Defendants, undertook the actions and conduct  
16 described herein in order to obtain the origination fee based on the total funding obligation of  
17 \$16,230,000.00 (which was then desperately needed by USA Capital) and to provide additional  
18 monies as a source of funds to add to the pool for potential disbursement to the direct lenders on  
19 various loans.

20 23. On April 13, 2006, USA Capital, the Trust, and various other affiliated entities  
21 filed voluntary petitions under the provisions of Chapter 11 of Title 11 of the United States Code  
22 (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Nevada. All  
23 such cases remain pending. Since the filing of the bankruptcy cases, former management of USA  
24 Capital (including Milanowski) has been displaced and Thomas Allison inserted as the Chief  
25 Restructuring Officer of USA Capital and its affiliated debtors. Moreover, the bankruptcy court  
26 in the bankruptcy cases has to this point not permitted further funding on any of the pre-petition  
27 loan commitments made by USA Capital, on behalf of any of its investors, including the  
28 Defendants, notwithstanding the acknowledgement of the Debtor representatives of the existence

1 of such commitments and the extensive damage to borrowers – including Plaintiff – from the  
2 cessation of funding, and the likely litigation that will ensure from failure to do so.

3 24. Consequently, and notwithstanding the promises, commitments, representations  
4 and agreements of the duly authorized agents and representatives, including Milanowski,  
5 Esteves, and the other duly authorized agents and representatives of USA Capital (itself the duly  
6 authorized agent and representative of Defendants), and the terms of the Loan Agreement and  
7 Promissory Note, as construed, interpreted and acted upon by the parties, no further funding of  
8 the loan has occurred. A request was submitted by Plaintiff in or around May 22, 2006, advising  
9 that the funding schedule is 45 days behind schedule and requesting USA Capital to adhere to the  
10 schedule (See, letter dated May 22, 2006, attached hereto as Exhibit “G”). No response has been  
11 received from the Defendants, USA Capital, and/or the Disbursing Agent since the submission of  
12 such draw request. Notwithstanding the failure to fund the requested amount, and  
13 notwithstanding the cessation of the funding of the loan generally, upon information and belief  
14 the Disbursing Agent continues to disburse monthly to USA Capital, for ultimate disbursement  
15 to the Defendants, the amount of the alleged interest accruing monthly on the Initial Loan  
16 Amount.

17 25. Because of the cessation of funding, development at the Property has come to a  
18 virtual halt, the consultants, engineers, and others who worked on entitlement have not been  
19 paid, and the project is at a substantial risk of becoming, and is likely to become, embroiled in  
20 significant litigation. Plaintiff has now likewise been advised that because of the delay in  
21 development, if and when development is able to be resumed, the cost of the required services  
22 and materials will have increased significantly. Finally, and because of the virtual cessation of  
23 development as a result of the Defendants’ cessation of funding, complying with the required  
24 completion deadline is unlikely, and substantial ramp-up costs will be incurred to re-ignite the  
25 development process. Consultants would leave due to non-payment, creating a lack of continuity  
26 in development of the Property.

27 26. Because of the pendency of the bankruptcy cases of USA Capital and the Trust,  
28 both of which are two of the approximately 100 persons, entities and other interests which

1 comprise the Defendants, USA Capital and the Trust have not been named as defendants in this  
2 action. Nonetheless, Plaintiff will be seeking relief from the automatic stay of Section 362 of the  
3 Bankruptcy Code to add USA Capital and the Trust as party defendants in order to liquidate the  
4 claims against all Defendants, including USA Capital and the Trust in one action, and to  
5 otherwise liquidated whatever other claims Plaintiff may have against USA Capital and/or its  
6 affiliated entities, at one time.

7       27. In addition, Plaintiff intends to seek relief from the automatic stay of Section 362  
8 of the Bankruptcy Code to send notice to the Disbursing Agent to cease disbursing the interest  
9 amounts monthly on the Promissory Note given that Plaintiff contends it has setoffs and  
10 affirmative claims against the Defendants which far exceed the amounts owing on the Note.  
11 Even if such relief from the automatic stay is denied, once the interest reserve is exhausted,  
12 Plaintiff will not fund further interest payments to the Defendants. Consequently, the  
13 Defendants will be required, in order to recover on the indebtedness, to institute an action to  
14 foreclose the Deed of Trust in this Court. The claims asserted herein would appear to be  
15 compulsory counter-claims in any such foreclosure litigation. The foreclosure litigation may only  
16 be brought in the jurisdiction in which the property exists and the facts and circumstances  
17 certainly give rise to defenses and affirmative defenses in such litigation. Because the forum  
18 selection clauses contained in the Loan Documents were non-bargained for, mandatory  
19 provisions in USA Capital's and Defendants' form loan documents; are unreasonably one-sided;  
20 violate the public policy of this State; and purports to transfer a local dispute to an inconvenient  
21 and prejudicial forum to the benefit of the drafting party, such provisions are unenforceable.

22       28. Plaintiff has been required to retain the services of the Law Office of Daniel D.  
23 White to enforce its rights and pursue the claims set forth herein, and has agreed to pay such  
24 attorneys a reasonable fee for their services.

25       29. All conditions precedent to the institution of this action have been waived,  
26 excused, or otherwise performed.



**FIRST CAUSE OF ACTION:**

**FRAUD**

**(Against All Defendants)**

30. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 29, inclusive, and incorporates the same herein as though set forth in full.

31. As alleged herein, Milanowski, Esteves, and the other duly authorized agents and representatives of USA Capital (itself the duly authorized agent and representative of Defendants) repeatedly represented to Plaintiff that the loan would be fully funded (i.e., in the amount of \$16,230,000.00 as set forth in the Agreement, See, Exhibit "E"), notwithstanding whatever language may occur in the mandatory, non-bargained for, form documents utilized by USA Capital in its business practices. Such representations were made at a time when the duly authorized representatives of USA Capital knew that given the dire financial circumstances of USA Capital and its affiliated entities that the loan would not likely be fully funded. Such false representations were made in order to induce reliance thereon by Plaintiff.

32. But for such materially false representations and inducements, Plaintiff would not have entered into the loan arrangement with Defendants and would have sought financing elsewhere.

33. Plaintiff did, in fact, rely upon such false, material representations and inducements in entering into the loan arrangement with Defendants and the commencement of development on the Property.

34. Based upon such materially false representations and inducements by the duly authorized agents and representatives of Defendants, made with the intent that Plaintiff rely upon, and upon which Plaintiff did in fact rely, Plaintiff has incurred extensive damage, which is ongoing and increasing, in an amount to be proven at trial.

35. Plaintiff is informed and believes that the wrongful conduct of Defendants and their duly authorized agents and representatives was willful, malicious, and made with the intent to and designed to obstruct and damage Plaintiff. Plaintiff is therefore entitled to recover exemplary and punitive damages in a sum sufficient to punish Defendants.

**SECOND CAUSE OF ACTION:**  
**BREACH OF IMPLIED COVENANT OF GOOD FAITH**  
**AND FAIR DEALING**

(Against All Defendants)

36. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 35, inclusive, and incorporates the same herein as though set forth in full.

37. Every contract relating to the Loan Documents includes a covenant of good faith and fair dealing in the performance of each contractual obligation.

38. The Defendants, acting by and through their authorized agent, USA Capital, failed to fund the entire amount of the loan (i.e., in the amount of \$16,230,000.00 as set forth in the Agreement, See, Exhibit "E") after inducing Plaintiff into the loan arrangement generally.

39. Milanowski, Esteves, and the other duly authorized agents and representatives of USA Capital (itself the duly authorized agent and representative of Defendants) repeatedly represented to Plaintiff that the loan would be fully funded despite the fact that they knew that given the dire financial circumstances of USA Capital and its affiliated entities that the loan would not likely be fully funded.

40. The wrongful conduct of Defendants, acting by and through their authorized agent, USA Capital, constitutes a breach of the implied covenant of good faith and fair dealing, in that it is unfair dealing in the form of conscious and deliberate acts that unfairly frustrates the agreed-upon purpose of the Loan Documents and disappoints the reasonable expectations of Plaintiff.

41. Plaintiff is informed and believes that the Defendants, acting by and through their authorized agent, USA Capital, acted in bad faith to frustrate the benefits Plaintiff was to receive under the loan arrangement.

42. Based upon such wrongful conduct by the duly authorized agents and representatives of Defendants, Plaintiff has incurred extensive damage, which is ongoing and increasing, in an amount to be proven at trial.

1 43. Plaintiff is informed and believes that the wrongful conduct of Defendants and  
2 their duly authorized agents and representatives was willful, malicious, and made with the intent  
3 to and designed to obstruct and damage Plaintiff. Plaintiff is therefore entitled to recover  
4 exemplary and punitive damages in a sum sufficient to punish Defendants.

5  
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

8 **ON ALL CAUSES OF ACTION:**

- 9 1. For compensatory and consequential damages in an amount to be proven at trial;  
10 2. For punitive damages;  
11 3. For attorneys' fees for services rendered to Plaintiff in this action;  
12 4. For costs of suit incurred herein; and  
13 5. For such other and further relief as this Court deems just and proper.  
14

15  
16 Dated: October 3, 2006

Law Office of Daniel D. White



DANIEL D. WHITE

Attorneys for Plaintiff GATEWAY STONE  
ASSOCIATES, LLC